contemplated the possibility of such an execution when it framed the Code.

Mr. Wright also argued that stress should be laid on the word seizure in section 4 (e) of the Bankruptcy Enactment, and that seizure could only mean physical seizures as contemplated in sections 267 and 271 where the words "actual seizure" are found. The corresponding section of the Bankruptcy Act in England provides that execution must have been levied by seizure of the debtor's goods, and it is difficult to see what else the word "seizure" in section 4 (e) Bankruptcy Enactment can mean except actual seizure. It is of importance to the argument that the word seizure which originally occurred in paragraph (j) of this section has been altered to "attachment" by Enactment 36 of 1933, but has been left in paragraph (e); and further section 43 (ii) of the Bankruptcy Enactment shows how seizure is used therein.

But I do not think it is necessary to decide this point; I prefer to decide it on the point that the rights of Tham Heng Kwai under the decree are exempted from attachment, and I think the appeal should be dismissed with costs.

Appeal dismissed.

[APPELLATE CIVIL JURISDICTION]
HUGGARD, C.J. (S.S.), THOMAS, C.J. (F.M.S.) & BURTON, J.
April 11, 1935.

TUNKU ABAIDAH & ANOR. .....Appellants

v.

TAN BOON HOE .....Respondent

[KEDAH CIVIL APPEAL No. 8 of 1353]

The Reciprocal Enforcement of Judgments Enactment, 1342, section 3 (ii) (b)—Registration of judgment.

The mere presence of a defendant in a country at a time when an obligation is incurred does not of itself give the Courts jurisdiction over him in respect of such obligation.

The words "being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original Court" in section 3 (ii) (b) of the Reciprocal Enforcement of Judgments Enactment, 1342, do not relate to the time at which the contract was entered into but to the date on which the proceedings were instituted in the original Court.

C. D. D. Hogan for the appellants.

E. A. de Buriatte for the respondent.

Cur. Ad. Vult

SIR WALTER HUGGARD, C.J. (STRAITS SETTLEMENTS)—This is an appeal from the decision of the learned Judge of the First Division dismissing an application by the second Defendant to set aside the registration of a judgment which had been registered under the provisions of the Reciprocal Enforcement of Judgments Enactment, 1342.

The facts, as to which there is no dispute, may be briefly stated. In 1932 the respondent instituted proceedings in the Supreme Court at Penang against the appellant and her husband to recover monies due for principal and interest on a promissory note. Judgment in default of appearance was entered against the appellant on the 3rd May, 1934. At the date of the execution of the promissory note the appellant was temporarily residing at Penang, but before the proceedings referred to were commenced she had left Penang and had returned to her home in Kedah where she still resides. The Writ in Penang suit was served upon her in Kedah.

In 1934 the respondent applied to the Judge of the First Division for an order that the judgment obtained at Penang should be registered in the High Court of Kedah under the Reciprocal Enforcement of Judgments Enactment, 1342, and on the 18th September, 1934, it was ordered that the judgment be registered against the appellant, leave being given to her to apply within fourteen days to set aside the registration. In October, 1934, the appellant applied to set aside the registration of the judgment but her application was dismissed by the learned Judge of the First Division. It is from that decision that this appeal arises.

In support of her appeal the appellant relies on the provisions of Section 3 (ii) of the Reciprocal Enforcement of Judgments Enactment and she contends that registration of the judgment in the present case should not have been ordered on two grounds:—

(1) that the Supreme Court at Penang in entering judgment against her had acted without jurisdiction and

(2) that she, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the Supreme Court at Penang, had not voluntarily appeared or otherwise submitted or agreed to submit to the jurisdiction of that Court.

In considering the first of these two grounds it has to be borne in mind that the appellant was and is a subject of the State of Kedah (which in relation to Penang must be regarded as a foreign state), that she was temporarily resident at Penang at the date of the execution of the promissory note but had left Penang and was residing in Kedah at the date of the institution of the Penang suit. In the Court below the learned Judge, in holding that in these circumstances the Penang Court has jurisdiction to enter judgment against the appellant, appears to have based his decision on a single sentence in the judgment in *Schibsby* v. *Westenholz*, L.R. 6 Q.B. 155. In delivering the judgment of the Court in that case, Blackburn, J. said:—

> "If at the time when the obligation was contracted, the defendants were within the foreign country, but left it before the suit was instituted, we should be inclined to think the laws of that country bound

them....."

This observation, however, was considered by the Judicial Committee of the Privy Council in *Sirdar Gurdyal Singh* v. *Rajah of Faridkote*, (1894) A.C. 670 and the following is an extract from the judgment, at pages 685-686 :—

> "Upon this sentence it is to be observed, that beyond doubt in such a case the laws of the country in which an obligation was contracted might bind the parties, so far as interpretation and effect of the obligation was concerned, in whatever forum the remedy might be sought. The learned Judge had not to consider whether it was a legitimate consequence from this, that they would be bound to submit, on the footing of contract or otherwise, to any assumption of jurisdiction over them in respect of such a contract by the tribunals of the country in which the contract was made, at any subsequent time, although they might be foreigners resident abroad. That question was not argued, and did not arise, in the case then before the Court; and, if this was what Blackburn, J., meant, their Lordships could not regard any mere inclination of opinion, on a question of such large and general importance, on which the Judges themselves would have desired to hear argument if it had required decision, as entitled to the same weight which might be due to a considered judgment of the same authority. Upon the question itself, which was determined in *Schibsby* v. *Westenholz*, Blackburn, J. had at the trial formed a different opinion from that at which he ultimately arrived; and their Lordships do not doubt that, if he had heard argument upon the question whether an obligation to accept the *forum loci contractus* as having, by reason of the contract, a conventional jurisdiction against the parties in a suit founded upon that contract for all future time, wherever they might be domiciled or resident, was generally to be implied, he would have come (as their Lordships do) to the conclusion that such obligation, unless expressed, could not be implied."

Commenting upon this extract from the Privy Council judgment the very learned authors of *Dicey* on The Conflict of Laws, 3rd Edition, state as follows at page 411:—

> "It may, therefore, be concluded, at any rate with great probability, that..... the mere presence of a defendant in a country at a time when an obligation is incurred does not of itself give the Courts jurisdiction over him in respect of such obligation."

Accepting this view as correct, it is clear that in the present case the mere fact that the appellant, being a subject of a foreign State, happened to be temporarily residing at Penang at the date when the promissory note was executed, was not of itself sufficient to confer upon the Penang Court jurisdiction over her in respect of that note. Unless, therefore, it can be said that the appellant here by her own conduct submitted to the jurisdiction of the Penang Court, that Court must be regarded as having acted without jurisdiction and the judgment entered against the appellant must be regarded as a nullity.

This brings me to the second ground set out above. Under this ground the appellant contends that she did not, either expressly or impliedly, submit to the jurisdiction of the Penang Court. On the facts in this case I am of opinion that this contention must be accepted. Apart from the actual execution of the promissory note the appellant has done nothing whatever which could be regarded as a submission or an agreement to submit to the jurisdiction of the Penang Court.

On behalf of the respondent it was suggested that the words:—

> "being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original Court."

in section 3 (ii) (b) of the Enactment had reference to the time at which the contract was entered into, and that therefore the appellant did not come within those excepting words. In my opinion, however, the words quoted above clearly relate to the date on which the proceedings were instituted in the original Court.

Alternatively it was argued that an agreement to submit should be implied from the execution of the note in Penang, but I have not been able to find any authority in support of this view. On the contrary, the decisions in *Schibsby* v. *Westenholz* (*supra*) and *Sirdar Gurdyal Singh* v. *Rajah of Faridkote* (*supra*) appear clearly to negative it.

For these reasons I am satisfied that, in entering judgment against the appellant in this matter, the Penang Court acted without jurisdiction, and that the judgment must be regarded as a nullity. The judgment therefore should not have been registered in Kedah under the Reciprocal Enforcement of Judgments Enactment.

In fairness to the learned Judge in the Court below it is right to say that the observations of the Privy Council in *Sirdar Gurdyal Singh* v. *Rajah of Faridkote* (*supra*) do not appear to have been brought to his notice.

This appeal must be allowed and the registration of the judgment set aside.

The appellant is entitled to her costs in this Court and in the Court below.

The amount deposited in Court as security for the costs of this appeal may be paid out in such manner as may be agreed to by the parties concerned.

SIR SAMUEL THOMAS, C. J. (FEDERATED MALAY STATES)—The decision of this appeal depends in my opinion on the construction to be placed on the words contained in section 3 (ii) (b) of the Reciprocal Enforcement of Judgments Enactment, 1342, which is as follows:—

> "The judgment debtor being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original Court did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that Court."

It was argued that the word 'was' should be read as 'has been,' and that the time of carrying on business or residence might be either that when the obligation was entered into, or when the proceedings were taken, or when judgment was obtained.

I am of the opinion that the time referred to is when the proceedings were commenced.

It was next argued that in the present case the appellant had agreed to submit to the jurisdiction of the Court.

The mere fact of entering into a contract is not of itself a sufficient agreement to submit since such an agreement cannot be inferred but must be express—(see *Schibsby* v. *Westenholz*. L.R. 6 Q.B. 155) and also (*Sirdar Gurdyal Singh* v. *Rajah of Faridkote*), (1894) A.C. 670.

The question then arises whether the undertaking to pay contained in what might be termed an 'inland' promissory note is a sufficient expression of an agreement to submit to the jurisdiction.

The learned President of this Court says in his judgment which I have had the advantage of reading :—

> "Counsel for the respondent argued that an agreement to submit should be implied from the execution of the note in Penang. but I have not been able to find any authority in support of this view."

I admit at once that I have had no greater success. There is nothing in the Bills of Exchange Ordinance directly bearing on this matter. I notice that when it is a question of presentment under section 45 (d) of the English Act, a bill is presented at the proper place (in any other case), if presented to the drawer or acceptor wherever he can be found, or if presented at his last known place of business or residence. So that for presentment it is necessary to seek out the drawer or acceptor.

In the English and Empire Digest volume 6, page 463, I find the following :—

> "Defendant made three promissory notes in Manitoba payable in that province. Plaintiffs brought action upon them in Manitoba and served defendant with the statement of claim in Saskatchewan. Defendant did not appear or submit to the jurisdiction of the Manitoba Court, but suffered judgment by default. Plaintiffs subsequently brought action in Saskatchewan to enforce the Manitoba judgment or, in the alternative, on the notes :—HELD: they could recover on the notes. *British American Investment Co.* v. *Flawse*, (1911) 19 W.L.R. 255; 4 Sask. L.R. 372."

The Canadian Law Reports are not in the Library, and I have not been able to refer to the case itself.

It would seem that by that decision it was held that the mere making of the notes was not a submission to the jurisdiction. If such were the case in respect of provinces in the same Dominion, it would seem impossible to arrive at any other decision when it is a question of different countries.

I agree, therefore, with the judgment of the learned President allowing the appeal and ordering the registration of the judgment to be set aside. The appellant must have her costs in this Court and in the Court below.

BURTON, J.—I have read the judgment of Sir Walter Huggard, C.J. and I agree with it entirely. It was principally on the ground that Tunku Ajar had been resident in Penang and subject to the Courts of Penang at the time when the Promissory Note was signed that Kellagher, J. held that she had agreed to submit to the jurisdiction of the Penang Courts, and he relied on the case of the *Ho Hong Bank Ltd.*, (1931-1932) F.M.S. L.R. 118; 1 Mal. L.J. 76 and especially on a passage of the judgment of Lord Blackburn in *Schibsby* v. *Westenholz*. L.R. 6 Q.B. 155 cited by Sproule, J. in a schedule :—

> "If at the time the obligation was contracted the Defendants were within the foreign country, but left it before the suit was instituted, we should be inclined to think the laws of the country bound them ....."

But the case of the Ho Hong Bank Ltd., is only an authority for the proposition that a judgment of a foreign Court of competent jurisdiction, obtained in default of appearance, against the defendants who were ordinarily resident in the foreign country, can be registered in the Supreme Court of Johore under the Judgments (Reciprocity) Enactment of 1922; and the words which immediately follow the words of Lord Blackburn quoted by Sproule, J. are "though before finally deciding this we should like to hear the question argued;" and in the case of *Sirdar Gurdyal Singh* v. *Rajah of Faridkote*, (1894) A.C. 670 the Privy Council expressly referred to and disagreed with the words in the judgment of *Schibsby* v. *Westenholz* (*supra*) upon which Kellagher, J. relies.

I think, therefore, that the trial Judge was wrong in holding that because the obligation under the contract arose in Penang at a time when the defendant was resident in Penang the Penang Courts had jurisdiction over the appellant, and I agree that the appeal should be allowed with costs, and the registration of the judgment set aside.

Appeal allowed.